Nik Mohd Suhaimi bin Ahmad Ghazali v Siti Fairuz bt Shamsuri & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO WA-21NCVC-79–09 OF 2018
AHMAD BACHE J
30 NOVEMBER 2023

Tort — Malicious process/abuse of process — Whether plaintiff had proven the tort against defendants on balance of probabilities — Whether plaintiff had shown that Malaysian Anti-Corruption Commission officers ('defendants') had been deliberately malicious in the manner they arrested, detained and produced him in court to be charged — Whether defendants had harassed, threatened, intimidated and induced plaintiff to plead guilty at all material times — Whether adverse publicity caused by defendants' actions caused plaintiff to suffer physical, mental, psychological and emotional distress, wrecked his business life and caused his wife and children to leave him — Whether plaintiff was entitled to be compensated for the damages he had suffered

The appellants were officers of the Malaysian Anti-Corruption Commission ('MACC') who were sued by the respondent in the High Court ('HC') for committing the tort of false imprisonment (entailing wrongful arrest, wrongful detention and harassment) and the tort of malicious prosecution against him. MACC officers from Putrajaya arrested and detained the respondent on suspicion of having committed bribery and then took him by car to Kuantan where he spent the night in a MACC lock-up. The following morning, he was brought handcuffed to the Kuantan sessions court where he was charged for the offence of bribery under s 468 of the Penal Code. The respondent pleaded not guilty. After the proceeding, he was again handcuffed before being taken away from the court in full view of media personnel. The respondent contended that at all material times the MACC officers harassed, threatened, intimidated and induced him to plead guilty to the charge. At the trial, the respondent was acquitted and discharged at the close of the prosecution's case without his defence being called as the court found no prima facie case had been made out against him. The public prosecutor appealed to the Court of Appeal against the acquittal but subsequently withdrew it. The respondent said the appellants' actions in the entire episode had not only caused him physical, mental and psychological suffering but destroyed his business and his family life. He said he was made a bankrupt due to business losses he suffered as a result of the bad publicity surrounding the case whilst his wife and children left him. Following a trial, the HC allowed the respondent's claim for wrongful arrest, imprisonment and harassment (which the trial court rebranded as the tort of malicious process or abuse of process) but disallowed the claim for malicious

prosecution. The appellants appealed against the decision.

Held unanimously dismissing the appeal, affirming the HC's decision and ordering the damages payable to the respondent to be assessed:

(1) Whilst the respondent's arrest and detention by the MACC was legal, he was subjected to abuse, harassment, intimidation, inducement and harm which had adversely affected him physically, mentally and psychologically. Hence, he was entitled to some form of redress or remedy for the tort of malicious process/abuse of process (see para 13).

(2) The court took the view that suspects investigated and later arrested and detained on suspicion of committing while-collar crimes, especially those holding signal positions in a corporation or in society, should not be treated like hardcore criminals. In handling such white-collar crime suspects/arrestees under their custody, officers of investigating and enforcement agencies should exercise restraint and transparency, uphold the rule of law and be humane and not abuse the legal process in the discharge of their duties. They should accord the suspects due protection from harm and observe all the SOPs. They were the stewards of public trust and they had to ensure they did not erode that trust. Even as between white collar suspects/detainees/accused persons, the MACC must ensure that they were treated alike and not preferentially (see paras 9–10, 19, 38 & 51–52).

(3) The evidence in this case showed that the appellant was unnecessarily handcuffed tightly as though he was a hardcore criminal, even during his journey to Kuantan. The cuffs caused bruises on his wrists. This was a form of oppression. The respondent was also told that the media had already been informed about when he would be charged in court. This was an act of harassment and inducement to make the respondent plead guilty. Although the respondent was sick at the time of his arrest and detention, he was denied medication. During his arrest, he was deprived of the chance to make preparations regarding his bail, medications, etc. After he was charged in court, the respondent was deliberately paraded around the court's lobby in full view of the media. The adverse publicity about his arrest, detention and of being charged in court damaged the respondent's life and reputation as a businessman and also wrecked his family life as his wife and children left him and he was adjudged a bankrupt. The evidence showed deliberate and malicious treatment of the respondent by the appellants that was pre-planned. The entire episode had caused the respondent to suffer serious mental, physical and psychological suffering (see paras 28 & 30–33).

(4) Even though the respondent had not used the word 'malicious process' in his statement of claim but relied on 'false imprisonment/malicious prosecution', the facts pleaded and the evidence relied upon clearly

showed that the respondent had pleaded facts which were sufficient to show that the appellants had committed the tort of malicious process against him. Pleadings-wise, the appellants could not be said to have been caught by surprise (see paras 46 & 49).

[Bahasa Malaysia summary

Perayu merupakan pegawai Suruhanjaya Pencegahan Rasuah Malaysia ('SPRM') yang disaman oleh responden di Mahkamah Tinggi ('MT') kerana melakukan tort pemenjaraan palsu (melibatkan penangkapan secara salah, penahanan salah dan gangguan) dan tort pendakwaan berniat jahat terhadapnya. Pegawai SPRM Putrajaya telah menahan responden kerana disyaki telah melakukan rasuah dan kemudian membawanya dengan menaiki kereta ke Kuantan di mana beliau bermalam di lokap SPRM. Keesokan paginya, beliau dihadapkan ke Mahkamah Sesyen Kuantan di mana dia didakwa atas kesalahan menerima rasuah di bawah s 468 Kanun Keseksaan. Responden mengaku tidak bersalah. Selepas prosiding tersebut, beliau sekali lagi digari sebelum dibawa keluar dari mahkamah dengan liputan penuh petugas media. Responden berhujah bahawa pada setiap masa material pegawai SPRM mengganggu, mengugut, menakut-nakutkan dan mendorongnya untuk mengaku bersalah terhadap pertuduhan itu. Pada perbicaraan itu, responden dilepas dan dibebaskan pada akhir kes pendakwaan tanpa dipanggil membela diri kerana mahkamah mendapati tiada kes prima facie dibuat terhadapnya. Pendakwa raya merayu kepada Mahkamah Rayuan terhadap pembebasan itu tetapi kemudiannya menarik balik tindakan rayuan tersebut. Responden menghujahkan bahawa tindakan perayu dalam keseluruhan kejadian itu bukan sahaja menyebabkan beliau mengalami penderitaan fizikal, mental dan psikologi tetapi memusnahkan perniagaan dan kehidupan keluarganya. Beliau juga muflis akibat kerugian perniagaan yang dialaminya akibat publisiti buruk yang menyelubungi kes itu manakala isteri dan anak-anaknya meninggalkannya. Selepas perbicaraan, MT membenarkan tuntutan responden untuk penangkapan, pemenjaraan dan gangguan yang salah (yang mana mahkamah perbicaraan menamakan semula sebagai tort proses berniat jahat atau penyalahgunaan proses) tetapi tidak membenarkan tuntutan pendakwaan berniat jahat. Perayu merayu terhadap keputusan itu.

Diputuskan, sebulat suara membenarkan rayuan, mengekalkan keputusan MT dan memerintahkan kerugian dibayar kepada responden untuk dinilai:

(1) Walaupun penahanan responden oleh SPRM adalah sah di sisi undang-undang, beliau telah mengalami tindakan salah guna kuasa, gangguan, ugutan, dorongan dan kemudaratan yang telah memberi kesan buruk kepadanya dari segi fizikal, mental dan psikologi. Oleh itu, beliau berhak mendapat beberapa bentuk ganti rugi atau remedi untuk tort proses berniat jahat/penyalahgunaan proses (lihat perenggan 13).

(2) Mahkamah berpandangan bahawa suspek-suspek yang disiasat dan

kemudian ditangkap dan ditahan kerana disyaki melakukan jenayah kolar putih, terutama mereka yang memegang jawatan dalam sesebuah syarikat atau dalam masyarakat, tidak boleh diperlakukan seperti penjenayah tegar. Dalam mengendalikan suspek/tangkapan jenayah kolar putih di bawah jagaan mereka, pegawai agensi penyiasatan dan penguatkuasaan perlu melaksanakan kekangan dan ketelusan, menegakkan kedaulatan undang-undang dan berperikemanusiaan dan tidak menyalahgunakan proses undang-undang dalam melaksanakan tugas mereka. Mereka seharusnya memberikan perlindungan sewajarnya kepada suspek-suspek daripada bahaya dan mematuhi semua SOP. Mereka merupakan kepercayaan awam dan mereka harus memastikan mereka tidak menghakis kepercayaan itu. Walaupun antara semua suspek/tahanan/tertuduh kolar putih, SPRM perlu memastikan bahawa mereka dilayan sama dan tidak berat sebelah (lihat perenggan 9–10, 19, 38 & 51–52).

(3) Keterangan di dalam kes ini menunjukkan bahawa perayu digari dengan ketat seolah-olah dia seorang penjenayah tegar, walaupun semasa perjalanan ke Kuantan. Gari tersebut menyebabkan lebam pada pergelangan tangannya. Hal ini adalah satu bentuk penindasan. Responden juga diberitahu bahawa media sudah dimaklumkan mengenai bila beliau akan didakwa di mahkamah. Ini merupakan satu tindakan gangguan dan dorongan untuk membuat responden mengaku bersalah. Walaupun responden sakit pada masa penangkapan dan penahanannya, dia dinafikan ubat-ubatan. Semasa penangkapannya, dia dinafikan peluang untuk membuat persediaan wang jaminan, ubat-ubatan dan lain-lain. Selepas beliau didakwa di mahkamah, responden sengaja diletakkan di lobi mahkamah dengan liputan penuh media. Publisiti buruk mengenai penangkapan, penahanan dan tuduhannya di mahkamah merosakkan kehidupan dan reputasi responden sebagai seorang ahli perniagaan dan juga merosakkan kehidupan keluarganya kerana isteri dan anak-anaknya meninggalkannya dan dia dihukum muflis. Keterangan menunjukkan perlakuan sengaja dan berniat jahat terhadap responden oleh perayu telah dirancang terlebih dahulu. Keseluruhan kejadian ini telah menyebabkan responden mengalami penderitaan mental, fizikal dan psikologi yang serius (lihat perenggan 28 & 30–33).

(4) Walaupun responden tidak menggunakan perkataan 'proses berniat jahat' di dalam pernyataan tuntutannya tetapi bergantung kepada 'pemenjaraan palsu/pendakwaan berniat jahat', fakta yang dikemukakan dan keterangan yang dikemukakan dengan jelas menunjukkan bahawa responden telah mengemukakan fakta yang mencukupi untuk menunjukkan bahawa perayu telah melakukan tort proses berniat jahat terhadapnya. Perayu tidak boleh dikatakan 'terkejut' dengan tindakan ini (lihat perenggan 46 & 49).]

Cases referred to

Ellamah d/o Ellapen v Renganathan s/o Komarasamy & Ors [1988] 3 MLJ 121, HC (refd)
Everett v Ribbands and Another [1952] 1 All ER 823, CA (refd)
Goldsmith v Sperrings Ltd [1977] 2 All ER 566; [1977] 1 WLR 478, CA (refd)
Hill v Hamilton-Wentworth Regional Police Services Board [2007] SCC 41; [2007] 3 SCR 129, SC (refd)
Malaysia Building Society Bhd v Tan Sri General Ungku Nazaruddin bin Ungku Mohamed 1998] 2 MLJ 425, CA (refd)
Reeves v Commissioner of Police of the Metropolis [2000] AC 360, HL (refd)
Roy v Prior [1971] AC 470, HL (refd)
Shanta a/p Manickam (suing for herself and her children being the dependants of the deceased Letchumanan a/l Subramaniam) v Teik Joo Chan Sdn Bhd & Anor [2015] 11 MLJ 721, HC (refd)
Teoh Beng Hock, Re [2010] 1 MLJ 715, HC (refd)
TN Metal Industries Sdn Bhd & Ors v Ng Pyak Yeow [1996] 4 MLJ 567, HC (refd)
Venture SKL Sdn Bhd v Geonex (M) Sdn Bhd [2023] 5 MLJ 122, CA (refd)

Legislation referred to

Federal Constitution art 145(3)
Penal Code s 468

Kamalanathan Ratnam (with Vinod Kamalanathan and Anis Amirah Zakaria) (Vinod Kamalanathan & Assoc) for the plaintiff.
Syahriah Shafiee (Senior Federal Counsel, Attorney Generals' Chambers) for the defendants.

Ahmad Bache J:

INTRODUCTION

[1] The plaintiff had filed a suit against all the defendants for the tort of false imprisonment which entails wrongful arrest, wrongful detention and harassment and the tort of malicious prosecution.

BRIEF FACTS

[2] The plaintiff was earlier investigated for bribery, and was later arrested and detained by Malaysian Anti-Corruption Commission ('MACC') and thereafter was charged under the authority of the public prosecutor for 'forgery' offence under s 468 of the Penal Code.

[3] He was arrested on 19 March 2014 at MACC Putrajaya and detained and brought by car to Kuantan MACC and spent the night in a MACC lock up

which was in deplorable condition. He was then brought to Kuantan Sessions Court in handcuff the next morning where he was charged. After the proceeding, he was again handcuffed and paraded in front of the medias that were awaiting him. According to him, throughout the process from Putrajaya to Kuantan, he was harassed, threatened, intimidated and induced (to plead guilty).

[4] On that day when he was charged he did not plead guilty, hence eventually he was tried by the sessions court but was acquitted and discharged without his defence being called, as the prosecution failed to prove a prima facie case against him. Throughout this proceeding, he suffered physiological and mental anguish, apart from anxiety, stress and tension, to say the least. To add salt to injury, the public prosecutor then filed an appeal to the Court of Appeal, prolonging his agony of having a charge still hanging on his head, inspite of being acquitted but subsequently withdrew it.

[5] Hence this suit by the plaintiff for false imprisonment/wrongful arrest/harassment and malicious prosecution against all the defendants (technically the tort of false imprisonment was against the MACC and its officers and the tort of malicious prosecution against the public prosecutor and its deputies).

[6] Regarding this civil trial, at the end of the trial, this court, on a balance of probability found that the plaintiff had successfully proved his claims for wrongful imprisonment/arrest/harassment which this court had 'rebranded' it as 'malicious process or abuse of process' with cost of RM40,000. However, this court disallowed the claim for malicious prosecution against the defendants as the court ruled that this tort is simply unsustainable in Malaysia because of the discretionary power accorded to the Attorney General/public prosecutor under art 145 (3) of the Federal Constitution, amongst others.

[7] Dissatisfied with that decision, the defendants had filed an appeal to the Court of Appeal for abuse of process/malicious process. The plaintiff did not file an appeal regarding the claim for malicious prosecution.

[8] Herewith are the grounds for that decision regarding abuse of process (malicious process).

ANALYSIS AND FINDINGS OF COURT

[9] This suit by the plaintiff underscores the need to recognise the tort committed by officers of investigating and enforcement agencies in handling suspects/arrestees under their custody especially in cases involving white collar

crimes, for example corruption, CBT/deception etc and the importance to exercise restrains and recognise humanity and human rights of white-collar crime suspects.

[10] This is so because inspite of their duty to act within the perimeters of the powers accorded to them, and that due protection to be accorded to the suspects under their custody and to ensure they are not harmed and to observe all the SOPs however cases of harm and abuses committed by these officers are quite prevalent.

The tort of malicious process/abuse of process

[11] The tort of malicious process or abuse of process was introduced earlier in United Kingdom, where the Police were found to be liable for procuring arrests maliciously and without reasonable cause. This tort is newly introduced in Malaysia. It entails the torts of wrongful arrest/detention/wrongful imprisonment etc and the lists are not closed. Apart from the United Kingdom, some other Commonwealth Countries, example New Zealand, Australia and Canada has recognised it. As we will see later, the Supreme Court of Canada earlier had even introduced the tort of negligent investigation against the Police, as they recognised that the torts of false imprisonment, misfeasance etc do not provide an *adequate* remedy.

[12] It is distinct from the tort of malicious prosecution which applies against the public prosecutor. In the case of *Everett v Ribbands and Another* [1952] 1 All ER 823, at p 826, lines B–D, the court held:

> This action was known as an action for malicious process. It differed from malicious prosecution in that there was no need for the plaintiff to prove that he had been acquitted. There could be no question of acquittal, because the process issued without his innocence or guilt being decided at all. It issued, indeed, without his being heard at all. A modern parallel is the issue of a search warrant. If it is obtained maliciously and without reasonable and probable cause, an action lies.

See also *Roy v Prior* [1971] AC 470.

[13] This tort prevails in a situation like the present case before the court whereby the claimant/plaintiff was rightfully and legally arrested but in the process, he was subjected to abuse, harassment, intimidation, inducement, harm which had affected him not only physically but mentally and psychologically (this court agreed that the arrest and detention was legal). Hence, he should be entitled to some form of redress or remedy for malicious process/abuse of process, as this court ruled that the arrest and detention was legal.

[14] In the English case of *Goldsmith v Sperrings Ltd* [1977] 2 All ER 566; [1977] 1 WLR 478, p 574 lines E–F, the Court of Appeal in a dissenting judgment said this about the tort of abuse of process:

> What may make it (the legal process) wrongful is the purpose for which it is used. If it is done in order to exert pressure so as to achieve an end which is improper in itself then it is a wrong known to the law.

[15] This dissenting judgment was applied by our court in *TN Metal Industries Sdn Bhd & Ors v Ng Pyak Yeow* [1996] 4 MLJ 567 at p 583 (A–C). The judge held that the tort of abuse of process is distinct from malicious prosecution. It is applied in cases when a legal process has been misused to satisfy some other ulterior motives, thus:

> Where a legal process, the basis for which in itself could have proper foundation, has been perverted to satisfy some other motive such as extortion or oppression, an action will lie at the feet of a party that suffers the wrong. This is the tort of abuse of process. Unlike the tort of malicious prosecution, *the tort of abuse of process does not depend on the wrongful procurement of the legal process but in the misuse of the process however correctly it was obtained …*

[16] The Court of Appeal in the case of *Malaysia Building Society Bhd v Tan Sri General Ungku Nazaruddin bin Ungku Mohamed* 1998] 2 MLJ 425, at p 438 above also applied the dissenting judgment in *Goldsmith v Sperrings Ltd*. The court ruled that, if a legal process is abused for an ulterior motive, and harm is done to the person for which the process is initiated against, then the court can award damages against the wrongdoer.

[17] This position has been neatly summed up by Lord Denning MR in his dissenting judgment in *Goldsmith v Sperrings Ltd* [1977] 2 All ER 566; [1977] 1 WLR 478, where at p 489 His Lordship said:

> In a civilized society, legal process is the machinery for keeping and doing justice. It can be used properly or it can be abused. It is used properly when it is invoked for the vindication of men's rights or the enforcement of just claims. It is abused when it is diverted from its true course so as to serve extortion or oppression: or to exert pressure so as to achieve an improper end. When it is so abused, it is a tort, a wrong known to the law. The judges can and will intervene to stop it. They will stay the legal process, they can, before any harm is done. If they cannot stop it in time, and harm is done, they will give damages against the wrongdoer.

[18] Though a dissenting judgment, the principle enunciated by Lord Denning has been accepted as authoritative of what constitutes an abuse of process.

See: *Malaysia Building Society Bhd v Tan Sri General Ungku Nazaruddin bin Ungku Mohamed*, at p 435.

[19] This court subscribes to the view that suspects investigated and later arrested for corruption and other white-collar crimes are normally physically, psychologically and mentally weak, as they are not prepared to face the eventualities that awaits them compared to a hardcore criminal arrested for a hardcore crime. Some even fainted upon arrest. Matters will take a turn for the worst if they themselves are sickly or patients of chronic diseases or even not in the best of his/their health at the time of the arrest/detention. The situation will be exacerbated when he was then holding a signal position in society for example as a Head of a Government Department, or a renounced politician or a CEO or a Director of a well-known company, as his reputation will be immediately tarnished.

[20] The next thing that will befall on the arrestee/suspect will be that the news of his arrest will be a breaking news in the medias. The next morning, he will be brought to court donned in the investigating agency's lock up attire (eg SPRM in orange or the Police in dark colour) in front of the many cameras awaiting him. This court takes judicial notice of this scenario.

[21] Have we ever thought what will happen to him thereafter. The court has taken judicial notice that firstly, he will be, with respect 'vilified' by the media with the news of his arrest his identity revealed. The public will then 'convict' him as they have already perceived him as having committed the (white-collar) crime, example corruption or CBT deception or forgery, albeit he was not even charged as yet or if he is charged on that day, he was not tried as yet.

[22] This court takes cognisance that at its worst, what will happen next to this suspect/detainee will be quite disastrous if not catastrophic, as what happened to the plaintiff in this case. Society and friends will shun away from him, wife and children will desert him, if he is a businessman, business associates will start to disassociate from him and that no prospect will do any business with him, to say the least. It doesn't stop here. Eventually, if he is a sickly person, his sickness will be further aggravated, and as night turn into day, very often he will enter into depression and thereafter may suffer from mental diseases. Some will suffer from 'suicidal tendency syndrome' and the classic case of *Re Teoh Beng Hock* [2010] 1 MLJ 715, who took his life whilst under the custody of SPRM/MACC is a classic example.

[23] Not to mention the loss of business and the loss of income that comes along with it.

[24] In the House of Lords case of *Reeves v Commissioner of Police of the*

Metropolis [2000] AC 360 ruled the Police have a duty to take reasonable steps to prevent a suspect/detainee from taking his own life. In the Supreme Court of Canada case in *Hill v Hamilton-Wentworth Regional Police Services Board* [2007] SCC 41; [2007] 3 SCR 129 the Supreme Court even recognised the tort of negligent investigation against the Police as the torts of false imprisonment, misfeasance and malicious prosecution do not provide an adequate remedy.

[25] This was what exactly happened to the plaintiff here who was investigated for bribery, arrested and finally charged by the MACC for forgery. His 'agony' was more profound here as according to him, he was wrongly charged because as he was eventually acquitted by the trial court without his defence being called and that the public prosecutor who filed an appeal against the acquittal, to the Court of Appeal withdrew the appeal thereafter.

[26] To deny him of any redress or remedies will cause gross injustice to him against the factual background above.

The evidence

[27] This court has perused all the evidence both oral and documentary and has considered the submissions by parties.

The breach

[28] From the evidence, this court observed that the plaintiff was mistreated and abused whereby he was unnecessarily handcuffed tightly as though he is a hardcore criminal as this is another form of oppression. That has caused bruises on his hands. The medical report specifically mentioned 'handcuff injury' and 'happened during arrest by SPRM' (see p 639 B2).

[29] The plaintiff as like any businessman already had his ticket to fly to Chennai the next day for business. Because of his abrupt arrest and detention, on 19 March 2014 he was unable to attend and was not given the opportunity to inform the other parties of his inability to attend and also to participate in the meeting. He has lost that business opportunities.

[30] This court ruled that, his arrest, detention and being charged on 20 March 2014 although legal but the adverse publicity was very damaging to his life and reputation as a businessman. This has also greatly affected the reputation of his family as a whole. That had changed his life not for the better, thereafter. From the evidence adduced, this court found that this action by the defendants (SPRM) was deliberate and hence malicious as it was pre planned. This was because the third defendant had at the SPRM Headquarters,

Putrajaya informed the plaintiff of his *eventual* charging the next day and that *the media was already informed*. This is an act of harassment and inducement to lure the plaintiff to plead guilty. Infact during his arrest, he was also deprived of making preparations regarding his bails, medication etc at that period of time. The plaintiff was brought to Kuantan handcuffed during the journey where he was charged at the Kuantan Sessions Court the next day.

[31] This court has had the opportunity of viewing the scenarios after he was charged, recorded by a TV station and aired on prime-time news slot that evening. This court observed that the plaintiff was deliberately paraded around the court's lobby after he was charged, in the full view of the medias. The next day the print medias reported the news, some displaying the plaintiff's full picture of being handcuffed with his full personal details.

[32] The plaintiff felt humiliated as he strongly believed that he is innocent, unless otherwise proven. *He was sick at that point of time and was denied medication*. As a result of all the above, in the ensuing days, he gradually experienced depressive symptoms — loss of mood, sleep loss (insomnia), poor appetite, lethargy, withdrawal symptoms persistent worries regarding loss of business and his mind was consistently preoccupied with worries about the charge he was then facing.

[33] Following the charge and the humiliation he was facing, he lost everything. His wife and the two children left him. He was in great financial debt because of the lost in his business. He was declared a bankrupt. He had to sell his house to release the bankruptcy proceeding.

[34] Through some form of corroboration in certain circumstances are needed but in this case this court ruled that the established facts above speaks more eloquent than words. This court has had the opportunity to see his demeanor whilst testifying in court. He has to pluck some courage and confidence to testify and occasionally he broke down but tried hard to compose himself. Be that as it may, this court ruled that he is a credible witness and there was no reasons for this court to rule otherwise.

[35] This court also had considered judicial notice of the surrounding circumstances and the circumstantial evidence in this case.

[36] Evidently, he suffers from mental health — that led him to psychotic illness. He also suffered from Anhedonia (see report p 667), which are associated to mental disorders, including depression.

[37] The following are the extract of the plaintiff's statement/evidence:

S39: Boleh terangkan kejadian-kejadian yang berlaku kepada kamu setelah ditangkap oleh SPRM?

J39: Atas arahan Defendan Keempat dan/atau Defendan Ketiga, Pegawai-Pegawai Defendan Kelapan membenarkan saya membuat hanya satu panggilan telefon sahaja bagi memaklumkan keluarga bahawa saya telah ditangkap oleh SPRM. Defendan Ketiga seterusnya telah mencabar saya untuk saya dapatkan 'cable' (kenalan/rakan berpengaruh) agar boleh terlepas daripada pertuduhan yang bakal dihadapkan kepada saya.

S43: Semasa kamu dibawa ke Mahkamah, apakah tindakan-tindakan Pegawai-Pegawai SPRM terhadap kamu?

J43: Semasa menunggu untuk kes saya dipanggil oleh Hakim Mahkamah Sesyen, Defendan Ketiga juga telah cuba menghasut dan/atau secara tidak langsung untuk mempengaruhi saya untuk mengaku bersalah dan bahawa sekiranya saya mengaku bersalah, hanya hukuman denda sahaja yang akan dikenakan terhadap saya. Tindakan Defendan Ketiga tersebut seolah-olah menganggap saya sememangnya bersalah tanpa dibicarakan dengan adil terlebih dahulu.

Saya juga telah digari dengan ketat sehingga sukar untuk bergerak dan mengambil sapu tangan untuk mengelap muka dan hidung saya kerana saya sedang mengalami selsema dan batuk yang teruk. Sementara menunggu proses ikat jamin selesai, saya berada di bilik saksi/bilik menunggu Mahkamah. Di situ, seorang Polis pengawal Mahkamah bersimpati melihat keadaan saya telah meminta agar gari saya dibuka atau dilonggarkan kerana saya kelihatan tenang dan tidak berbahaya atau mendatangkan ancaman, namun Polis pengawal Mahkamah tersebut telah ditengking dengan keras oleh Pegawai pengiring SPRM tersebut.

[38] The situation above underscores the need for transparency to prevail in all process of investigation by the investigating and enforcement agencies' officers and that the rule of law to be strictly observed and that they should not abuse the legal process in discharging their duties. As public servants, they are stewards of public trust and they have to ensure not to erode this trust.

[39] By not allowing this claim, when a certain remedies and redress are wanting, a wrong message could be drawn ie we are condoning such acts.

Egg shell skull rule

[40] This court has taken cognizance that in the realm of the law of torts, there is a doctrine called 'eggshell skull rule' which means the defendant takes the victim as they find them. It means if the plaintiff is injured or sick and the injury is exacerbated due to a plaintiff's particular susceptibility to a certain health condition, the defendant is still liable for the full injury.

[41] It follows that in a claim of this nature, the court has to consider who the plaintiffs/victims are. One of the considerations in this case is that as the

plaintiff was investigated (later arrested and detained) as a 'white collar' suspect/criminal holding quite a signal position in a company as contrast to a hard-core criminal, hence, the handling of the investigation, the arrest, the detention by the investigation agency on this two types of criminal suspects/accused should differ. As mentioned earlier, suspects being investigated/detained for white-collar crimes are normally by nature vulnerable as they are susceptible to harsh conditions and hence by nature are weak. He can even faint the moment he is arrested as compared to hard-core criminal suspect. It will be more profound if he holds a signal position as CEO or Director of a company or Director General of a government department etc

[42] They are normally investigated by MACC/SPRM.

[43] The hard-core category might be drug addicts, gangsters, ex-convicts of hard-core crime etc, who themselves are not first timers being detained/locked up/charged.

[44] It will be a gross injustice if courts were to keep its eyes shut in not making such distinction. For instance, a Director General of a government department or a CEO of a company was arrested because of some suspected bribery activity and was remanded. The news about his arrest/detention will be publicly made known (because of his signal position). The after effect will be very damaging and devastating. He will lose his job, will lose his reputation which could give rise to friends/society shunning away from him. Worse of all, the family will desert him. Hence, the court will have to take this into consideration in determining liability and assessment of damages. What is more, the plaintiff in this case was sick at the time of the arrest and the charging and was under medication.

[45] This by no means, would mean that court is practicing double standards but the law of torts permits it under the doctrine of the 'eggshell skull rule'.

Can the plaintiff's claim be sustained when he did not specifically plead in his pleading/statement of claim?

[46] This court opined that although in this case, the plaintiff had not used the word 'malicious process' but relied on 'false imprisonment/malicious prosecution', this court observed that the facts pleaded and the evidence relied on, show clearly that the plaintiff has pleaded facts sufficient to show the existence of the new tort of *malicious process* against the defendants, and therefore the defendants are liable for the same. This is permissible, because what is important is that the plaintiff has averred the facts in the pleadings which he is relying on, and not the legal effect.

[47] In the case of *Shanta a/p Manickam (suing for herself and her children being the dependants of the deceased Letchumanan a/l Subramaniam) v Teik Joo Chan Sdn Bhd & Anor* [2015] 11 MLJ 721, it was held that whilst it was true that the term 'occupier's liability' was not used in the statement of claim, it must be remembered that a pleading needs only to aver the facts relied upon and need not state the legal effect of the facts.

[48] In *Venture SKL Sdn Bhd v Geonex (M) Sdn Bhd* [2023] 5 MLJ 122 (CA), in a termination of agreement case, the respondent contended that he had stored the dismantled 'palong' and the machineries of the appellant, but led no evidence where it was stored. The appellant claimed damages for unlawfully removing and disposing off of the 'palong' and the machineries. Although the appellant did not employ the term 'conversion', however the pleaded facts and the evidence led to substantiate a case for conversion. The High Court disallowed the claim but the Court of Appeal set aside the judgment of the High Court and allowed the claim for conversion eventhough the claim for conversion was not pleaded.

[49] Put it in another way, the statements of claim might not have mentioned particulars exactly to 'abuse of process/malicious process' but the plaintiff did plead or allude to facts that pointed to abuse of process/malicious process. Hence, the defendants cannot be said to be caught by surprise.

[50] In the case of *Ellamah d/o Ellapen v Renganathan s/o Komarasamy & Ors* [1988] 3 MLJ 121, the Court of Appeal held that although perhaps the pleadings are wanting in the sense that they do not set out the detailed particulars of fraud, the evidence clearly shows the instances of fraud has occurred. The court ruled that though the particulars might be insufficient but it should not be a bar to the plaintiff's claim. Further, the defendants were not caught by surprise.

MACC practices double standards?

[51] This court observed that of late certain white-collar suspects/detainees/accused were given extra special treatment whereby for example they were not handcuffed etc This shouldn't have happened because it has given rise to 'legitimate expectation' by other similar suspects/accused in this category (white-collar), that they too be entitled to be accorded the same treatment. This has bearing on the liability and amount of compensation to be awarded.

[52] This can also give rise to an inference that incidents that few will get the breeze of being treated very exceptionally especially the VVIP suspects and many non VVIP white-collar suspects will be getting the pains as they are being denied of the same.

CONCLUSION

[53] This new approach by the court must be recognised and is timely as it is built on the foundation of fairness, reasonableness, justice and respect to this group of vulnerable suspects/detainees. This resonates with the application of the egg shell skull rule and the call that the time has come for society and officers of investigation and law enforcement agencies (like MACC and Police) to recognise the rights of these vulnerable suspects/arrestees as they are, at the extreme of the spectrum are susceptible to suffer from mental health which can cause them to even take away their own life (see *Teoh Beng Hock*'s case). The Ministry of Health once declared that from surveys conducted, four in every ten ordinary Malaysian, suffers from some form of mental health issues and remedial measures are to be taken to arrest this problem. It will be more profound to this group of people.

[54] Further this group of vulnerable suspects/detainees especially and the public as a whole view courts as a platform where their rights could be protected. By assuring that rights, will make public to repose trust in our court system as a fair and an effective forum to enforce their rights eventhough as an accused/detainee. What is more, for the plaintiff here, he was not found guilty afterall.

[55] To deny the plaintiff of this claim will cause gross injustice to him as amongst others his reputation is now beyond repair and society has convicted him eventhough court has acquitted him. He is now suffering especially mentally physiologically.

[56] Notwithstanding the decision of this court, MACC and the Police are to be commended for their commitments in discharging their professional duties of investigation but have to take into consideration of the welfare of the person/s investigated by them under their custody as anything done not within the legal perimeter of their powers/scope of duty will give rise to a civil claim in the area of torts as in this case against them.

[57] For the foregoing reasons, the claims of the plaintiff are allowed with costs of RM40,000. Damages are to be assessed at a date to be fixed.

Appeal dismissed, HC's decision affirmed and assessment of damages payable to the respondent ordered.

Reported by Dzulqarnain Ab Fatar